

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.46250 of 2021**

Arising Out of PS. Case No.-15 Year-2020 Thana- GOVERNMENT OFFICIAL COMP.
District- Aurangabad

SHAILESH KHARWAR S/o Uma Shankar Kharwar R/o village- Badki
Kothiya, Upadhyapur, P.S.- Industrial (Buxar), District- Buxar (Bihar)
... .. Petitioner/s

Versus

1. UNION OF INDIA
2. The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. N.K.Agrawal, Sr.Adv.
	:	Mr.Kamlendra Pd. Singh, Adv
For the Opposite Party/s	:	Mr.Radhika Raman, C.G.C.

**CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER**

- 3 19-05-2022 Let the defects, as pointed out by the office, be removed within four weeks of starting of Court proceeding in physical mode in normal course.

Heard Mr. N.K.Agrawal, learned senior counsel for the petitioner and Mr. Radhika Raman, the learned Central Government Counsel for the Union of India.

The petitioner seeks bail in a case registered for the offence under Sections 8(c),20(b)(II)(c),25 and 29 of N.D.P.S. Act, 1985(Amended).

On search, there is recovery of 164 packets of Ganja from the cabin of the Truck. The weight of the Ganja was found 696.750 Kg.

Learned counsel for the petitioner submits that the



petitioner has falsely been implicated in the present case. He further submits that it appears from the FIR that nothing has been recovered from conscious possession of the petitioner. He further submits that on the basis of the disclosure made by the co-accused, the name of the petitioner has falsely been implicated in the present case and the petitioner is in custody since 06.03.2021.

Learned Central Government Counsel for the Union of India, on the other hand, has vehemently opposed the prayer for bail of the petitioner and submits that the FSL Report confirms that the recovered article is 696.750 KG.

On the other hand, learned counsel for the petitioner submits that Section 50 of NDPS Act has not been followed in the present case and nothing has been recovered from conscious possession of the petitioner. Learned counsel for the petitioner has relied upon a judgment in the case of **Tofan Singh Vs. State of Tamil Nadu**, reported in **2021 (4)SCC 1 (Para-155)**.

Learned Central Government Counsel for the Union of India submits that the grant of bail in NDPS cases where the recovery of commercial quantity of narcotic is alleged is circumscribed under Narcotic Drugs and Psychotropic Substances Act, 1985, Section 37 which says that before grant



of bail, the Court must have reason to believe that petitioner has not committed the offence and in the event of release he would not commit similar offence.

The issue was considered by the Hon'ble Supreme Court in the case of **State of Kerala and Ors Vs. Rajesh & Ors**, reported in **2020(12) SCC 122**.

The recovery of huge quantity of Ganja from possession of co-accused and it appears from the record of the case that the petitioner is one of the members of the Gang and petitioner would not justify that he had no knowledge of the narcotic nor there is any material to substantiate that the petitioner would not commit such offence in the event of release.

Hence, I am not inclined to enlarge the petitioner on bail in connection with N.D.P.S. Special Case No.15 of 2020 corresponding to Cr. No.15 of 2020 pending in the court of learned 1st Additional District and Sessions Judge-cum-Special Judge (N.D.P.S.) Aurangabad.

Prayer is refused.

(Rajesh Kumar Verma, J)

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